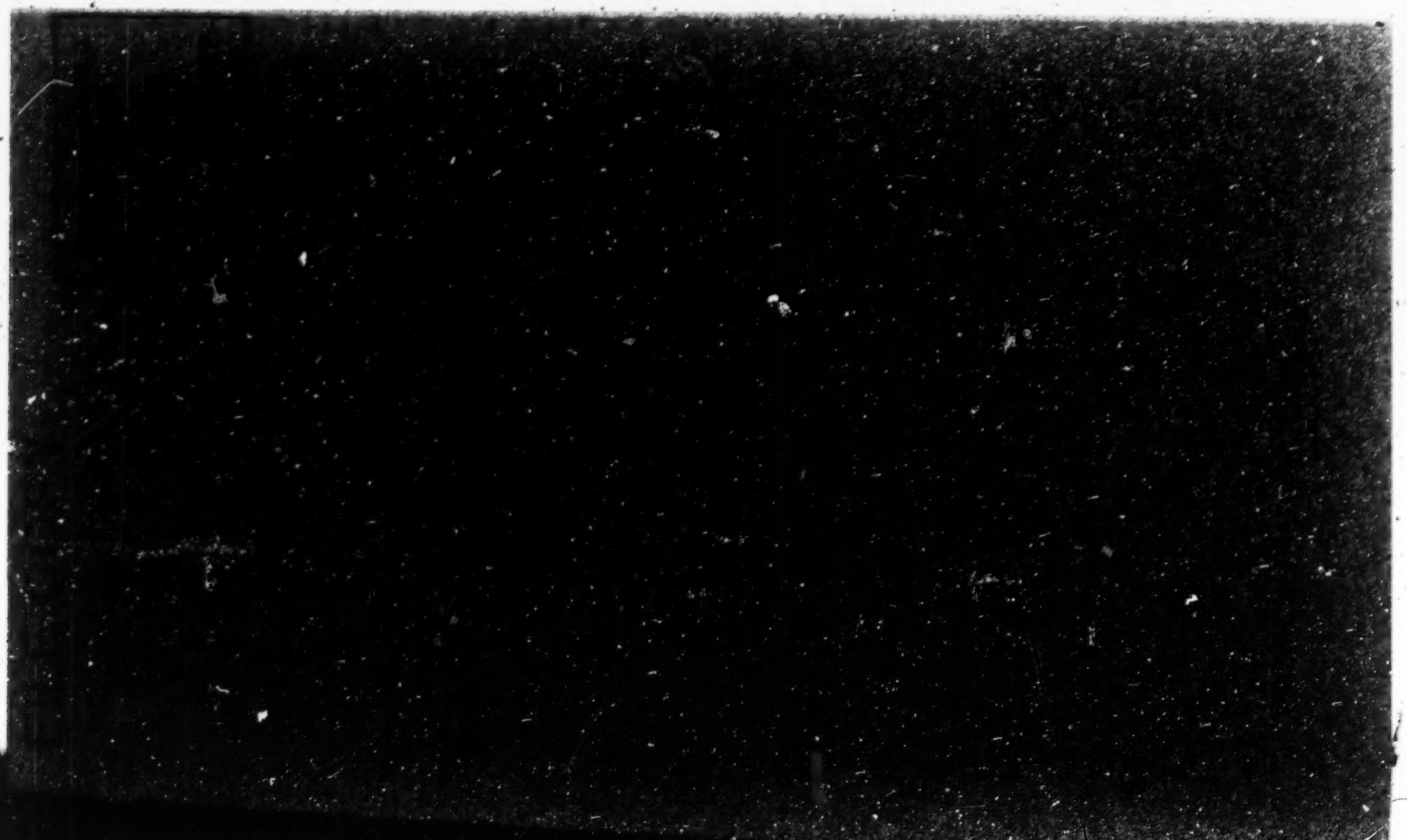

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141354—39

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 687

THE UNITED STATES OF AMERICA, APPELLANT

v.

NEAL POWERS AND RENE ALLRED

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE UNITED STATES

The brief filed on behalf of the defendants presents two arguments which may not adequately have been discussed in our principal brief.

I

Defendants contend that no effect can be given to the amending Act of June 14, 1937, by which the Connally Act was extended from June 16, 1937, to June 30, 1939. The amending Act, it is argued, must be given "prospective" application only; that is, it must be treated as making the same acts criminal for another two years, but not as preserving any penalties or liabilities which had already accrued.

We have already pointed out in our principal brief (pp. 8–9) that the basis upon which the defendants' argument rests—that there are two separate and distinct Connally Acts—cannot be sustained. There is no question, therefore, of "prospective" or "retroactive" application of a "second" Act. Congress has simply changed the expiration date of a temporary statute from June 16, 1937, to June 30, 1939, and has maintained until that time the statutory support for all prosecutions.

But defendants now urge that the 1937 amendment cannot even continue existing authority for the prosecution of offenses, since if the amendment were construed to do so it would constitute an *ex post facto* law in violation of Article I, Section 9, of the Constitution. The contention is based upon two assumptions: (1) That the expiration of a temporary statute operates like a statute of limitations, and bars further prosecution; and (2) that Congress may not constitutionally extend a statute of limitations as to offenses previously committed, even though the original period had not expired before the extension was made. Neither assumption can be supported.

The first assumption has been discussed in our principal brief (pp. 16–24), where we have contended that this Court should reject the common-law presumption that a temporary statute is intended to grant a legislative pardon to all offenders not finally convicted on its expiration date. If that

argument is accepted, there is no necessity in the present case for relying upon the extension of the Act at all, and defendants' present contention becomes moot.

But even if it be assumed that Congress, by setting an expiration date for a statute, intended to grant a legislative pardon to all offenders against such a statute who are not finally convicted on that date, a change of that expiration date by a subsequent Congress is not an *ex post facto* law. A similar contention occasionally has been raised with respect to the extension of statutes of limitations. Without exception, when the period of limitations has not expired before the amendment, the period has been treated as simply a question of procedure which may be extended in the discretion of the legislature. See *Beazell* v. *Ohio*, 269 U. S. 167, 171.

Falter v. *United States*, 23 F. (2d) 420 (C. C. A. 2d), certiorari denied, 277 U. S. 590, seems to be the only case in which the question has been raised in a Federal court. There the defendants were charged with conspiring to defraud the United States, the crime having been committed in 1919. In 1921 the period of limitations for the crime was extended from 3 to 6 years. The court held that, since the original period of limitations had not run when the amendment extending the period was enacted, the amendment was not an *ex post facto* law. Judge Learned Hand stated (23 F. (2d) at pp. 425–426):

> Certainly it is one thing to revive a prosecution already dead, and another to give it a longer lease of life. The question turns upon how much violence is done to our instinctive feelings of justice and fair play. For the state to assure a man that he has become safe from its pursuit, and thereafter to withdraw its assurance, seems to most of us unfair and dishonest. But, while the chase is on, it does not shock us to have it extended beyond the time first set, or, if it does, the stake forgives it.[1]

Several state courts have also reached the same result. In *Commonwealth* v. *Duffy*, 96 Pa. 506, the court stated (p. 514):

> Now an act of limitation is an act of grace purely on the part of the legislature. Especially is this the case in the matter of criminal prosecutions. The state makes no *contract* with criminals, at the time of the passage of an act of limitation, that they shall

---

[1] Congress had considered the question when it passed the amendment extending the period, and had reached the same conclusion as the court—that the extension should apply to offenses not then barred. The amendment states (Act of November 17, 1921, c. 124, 42 Stat. 220:

"* * * This Act shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but this proviso shall not apply to acts, offenses, or transactions which are already barred by the provisions of existing laws."

The Solicitor General, James M. Beck, had prepared for Congress a memorandum stating that this proviso was constitutional. See H. Rept. No. 365, 67th Cong., 1st Sess.; 61 Cong. Rec. 7061.

> have immunity from punishment if not prosecuted within the statutory period. Such enactments are measures of public policy only. They are entirely subject to the mere will of the legislative power, and may be changed or repealed altogether, as that power may see fit to declare. Such being the character of this kind of legislation, we hold that in any case where a right to acquittal has not been absolutely acquired by the completion of the period of limitation, that period is subject to enlargement or repeal without being obnoxious to the constitutional prohibition against *ex post facto* laws. A law enlarging or repealing a statutory bar against criminal prosecutions may, therefore, apply as well to past as to future cases if its terms include both classes. Such legislation relates to the remedy only and not to any property right or contract right.

See also *People* v. *Buckner*, 281 Ill. 340, 347; *Moore* v. *State*, 43 N. J. Law 203, 213; *Ex parte Larkin*, 1 Okla. 53. The decision in *People* v. *Lord*, 12 Hun 282 (Sup. Ct.), upon which the defendants rely, is not to the contrary. It dealt solely with a question of construction. Other cases in New York are in accord with *Commonwealth* v. *Duffy* and *Falter* v. *United States*. See *People ex rel. Pincus* v. *Adams*, 274 N. Y. 447, 455; *People ex rel. Reibman* v. *Warden*, 242 App. Div. 282, 284–286; *People* v. *Amann*, 159 Misc. 417, 419–422. See also *King* v. *Dharma*, [1905] 2 K. B. 335.

II

From the fact that a bill to make the Connally Act permanent, now pending before Congress, contains a saving clause with respect to past offenses, the defendants seek to draw the conclusion that the absence of such a saving clause in the 1937 amendment indicated the Congressional intent that prosecutions were not to be maintained for violations committed prior to the 1937 amendment. If a bill which has not yet become a law is any evidence at all of Congressional intent, we submit that the inclusion in it of a saving clause indicates clearly that Congress never intended that violations of the Connally Act should go unpunished so long as that Act was continued in force. This is particularly evident from the provision in Section 2 of the proposed Act which specifically authorizes the continuance of prosecutions for offenses committed prior to the 1937 amendment. Since it is extremely unlikely that Congress intended to revive prosecutions already barred, the language rather clearly expressed its view that the Connally Act had not at any time ceased to be in force and hence that prosecutions for its violation could still be maintained.

Actually, it is more probable that Section 2 was included in the proposed Act because the decision of the District Court in the instant case, if it were to prevail, would completely defeat the intent of Congress. Its inclusion upon the first judicial intimation of its necessity is most persuasive that Con-

gress does not intend that violators of a statute which it has continued in force shall be granted amnesty.

Respectfully submitted.

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APPELLEE'S BRIEF

NO. 687

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, *Appellant*,

VERSUS

NEAL POWERS AND RENE ALLRED, *Appellees*.

BRIEF FOR APPELLEES, NEAL POWERS AND RENE ALLRED

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NO. 687

IN THE

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THE UNITED STATES OF AMERICA, *Appellant*,

VERSUS

NEAL POWERS AND RENE ALLRED, *Appellees*.

BRIEF FOR APPELLEES, NEAL POWERS AND RENE ALLRED

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

INTRODUCTORY STATEMENT

Appellees do not question the jurisdiction of this court on this appeal, but conceive that the decision of the trial court was correct.

Appellees, defendants in the court below, are charged by indictment under the first count of a conspiracy under Revised Statutes, Section 5440, as amended (U. S. C. A., Title 88), to violate the Act of February 22, 1935,

being Chap. 18, 49 Stat. 30 (U. S. C. A., Title 15, Chap. 15A, p. 185, Current Pocket Part), and in nine counts of substantive offenses under said latter act.

The act involved is the Connally Act prohibiting transportation in interstate commerce oil and petroleum products produced in violation of a state law or regulation.

The Connally Act of February 22, 1935 was a temporary act, and Section 13 of the Act provided that the act should cease to be in effect June 16, 1937. There was no provision in the act saving penalties accruing during the continuation of the act after its expiration date.

On June 14, 1935, two days before the expiration of the act of February 22, 1935, the Section 13 was amended by the Act of June 14, 1937, Chap. 335, 50 Stat. 357, providing that the act should cease to be effective on June 30, 1939.

The conspiracy and all the acts charged in the indictment were consummated prior to June 14, 1937, or in other words prior to the effective date of the act extending the expiration date of the Connally Act.

QUESTIONS PRESENTED

This Court on this appeal is to determine whether or not the trial court was correct in holding,—

(1) That the right and power of the court to punish offenses committed in violation of a temporary act

would lapse upon the expiration of the temporary act in absence of a saving clause in the original act continuing prosecutions for offenses committed prior to the date the act would have expired; and

(2) That a retroactive effect would not be given to the extension Act of June 14, 1937, and in absence of an expressed declaration in the act itself, the court would not impute to Congress an intention to extend the time within which a prosecution could be brought for an offense which had but two days remaining before same would become completely barred.

The questions presented and determined by the trial court do not involve the power of Congress, but if it be established that offenses under a temporary act fall with the expiration of the act, then the question is, as stated by the Government in its brief, what was the intention of Congress in extending the expiration date in absence of an express declaration of such intention in the extension act.

The trial court has held, and it is appellees' contention that the holding is correct, that, in absence of such expressed declaration, the act is to be construed prospectively as applying to future offenses and not retroactively to past offenses.

It is the Government's contention that the trial court was in error, and that, in the absence of an express declaration by Congress, a retroactive intent and effect is to be read into the extending act, and the act is to be

construed so as to apply to past offenses and to continue offenses which when the act became effective (June 14, 1937) would have become wholly barred in two days.

PRELIMINARY DISCUSSION

The Government in support of its position relies chiefly upon early English cases decided long prior to the adoption of the Constitution of the United States. There are certain fudamental concepts of Government held by those men in a democracy who have a proper respect for the laws of which they are the common authors, and who recognize the power of the state as necessary but not divine. The merits of our written Constitution over the English Constitution has generally been recognized as lying chiefly in the fact that the people of the United States in prescribing the powers of Congress placed in the Constitution express limitations for the protection of their inalienable rights. The inhibition of Article 1, Sec. 9, Par. 3, against *ex post facto* laws brought to our jurisprudence a corollary rule that justice demanded that in absence of a clear intent, laws were to be applied prospectively and not retroactively.

The power of Congress before a right becomes fixed or vested to legislate retroactively is recognized, but it has seldom been exercised. And this Court has universally construed the Acts of Congress to apply prospectively, rather than retroactively.

The brief of the United States ignores what appellees conceive to be the well settled rules of construction as announced by this court, and the rule which Corpus Juris announces to be the general rule "except in jurisdictions where neither English nor American Common Law is in force." Sec. 16 Corpus Juris, p. 70, Sec. 34. They seek by inference to apply to the Connally Act some peculiar and unusual construction.

As a matter of fact the Connally Act, its history, its purpose, and all the surrounding circumstances give strength to and support the decision of the trial court.

There is nothing inherently wrong or evil in the act of a man who produces from his own land his own oil in whatever quantities he desires. The act even when it transgresses a written statute may hardly be said to involve moral turpitude. The propriety and necessity for governmental supervision to prevent the physical waste of natural resources has always been recognized. But the theory that hard times are the outgrowth of a bountiful surplus is a philosophical outgrowth of a new economy. "Economic waste" is another term for "low price," and with the advent of the East Texas oil field, The State of Texas pioneered in proration laws whose accepted and avowed purpose is to maintain the price of petroleum and its products. The ordinary citizen whose only interest in the oil business is that gasoline shall be as cheap as possible may accept the high prices maintained by proration laws and feel it their duty to give those laws their honest and earnest support according

to the letter of the law. But there is nothing in the act itself which suggests or demands that the laws should be liberally construed so as to exact a penalty where none was intended.

When the Connally Act of 1935 was enacted Congress recognized the purposes of the act to be temporary. It was specially limited to expire within two years. Congress recognized that with the return of normal conditions, people would probably desire to return to normal and accepted economic theories. It can hardly be assumed without some express declaration that Congress intended that when it should no longer be unlawful for a man to transport his own property, in which there was no inherent vice, that, after the act ceased to be unlawful, he could be indicted and punished for the act which would no longer be forbidden.

PROPOSITIONS OF LAW

In opposition to the Specifications of Error advanced by the appellant, appellees submit the following propositions of law,—

PROPOSITIONS

FIRST

An indictment charging an offense prohibited by a temporary act brought after the temporary act has expired under its own terms, for things done prior to the

expiration of the temporary act, cannot be maintained, where there is no saving clause in such temporary act continuing the offense theretofore committed after the expiration of the act under its own terms.

SECOND

An indictment for violation of the Connally Act of 1935 for transporting oil in Interstate Commerce which is alleged to have been produced in violation of the Texas proration law of 1935, and which indictment was not brought until September 17, 1938, cannot be maintained, since the Connally Act of 1935 expired under its own terms on June 16, 1937, and there was no saving clause in either act continuing offenses committed while the acts were in force after the act had expired.

THIRD

Criminal statutes passed after the commission of an offense are to be construed prospectively as applying to offenses committed in the future and not retroactively so as to cover past offenses unless the contrary intention clearly appears from the act.

FOURTH

The Federal Act of 1937 extending the provisions of the Connally Act of 1935 until June 30, 1939, did not apply to offenses committed under the original act and did not have the retroactive effect of continuing

the offenses committed prior to its passage, since the acts contained no saving clause, and said extension acts applied only to violations of the statutes occurring after their passage.

FIFTH

Section 13, of the Revised Statutes of the United States, being U. S. C. A., Section 29 (containing a general savings clause), does not apply to temporary acts expiring under their own terms, but only applies to repealed statutes.

SIXTH

Offenses committed under the Connally Act of 1935 are not continued after the expiration of the Act under its own terms by Section 13, of the Revised Statutes of the United States, because the Connally Act was a temporary act.

ARGUMENT UNDER FOREGOING PROPOSITIONS

I.

To the Effect that the right to prosecute for offenses committed under the Connally Act of 1935 has lapsed.

AUTHORITIES

The Irresistible, 7 Wheat (U. S.) 551, 5 L. ed. 520;

United States vs. Curtiss-Wright Export Corp., 299 U. S. 304, 81 L. ed. 255;

United States vs. Curtiss-Wright Export Corp., 14 Fed. Supp. 230;

Missouri-Pac. R. Co. vs. United States, 16 Fed. Supp. 752 (D. C., E. D. Mo., Three Judge Court);

South Carolina vs. Gaillard, 101 U. S. 433, 25 L. ed. 937;

Baltimore & Pacific R. R. Co. vs. Grant, 98 U. S. 398, 25 L. ed. 231;

National Exchange Bank vs. Peters, 144 U. S. 573, 36 L. ed. 545;

Sherman vs. Grinnell, 123 U. S. 679, 31 L. ed. 278;

Gunnee vs. County of Patrick, 137 U. S. 145, 34 L. ed. 601;

U. S. vs. Chambers, 291 U. S. 217, 78 L. ed. 763, 54 Sup. Ct. 434;

Moore vs. U. S., 85 Fed. 765, 29 C. C. A. 269;

U. S. vs. Baum, 74 Fed. 43;

Federal Land Bank vs. United States Bank, 13 Fed. (2) 36;

14 Am. Jur., Sec. 21;

16 Corpus Juris, p. 70, Sec. 34;

Revised Statutes of the United States, Sec. 13;

U. S. C. A., Title 1, Sec. 29 (Act of Feb. 25, 1871, Ch. 71, Sec. 4; 16 Stat. 432);

U. S. vs. Reisinger, 128 U. S. 403, 32 L. ed. 480;

Great Northern R. Co. vs. United States, 208 U. S. 452, 52 L. ed. 567;

Landen vs. U. S., 299 Fed. 75;

Goublin vs. U. S., 261 Fed. 5.

ARGUMENT

In order to clearly understand the issues involved on this question, it is necessary to understand clearly the facts. The indictment is predicated upon a violation of the Connally Act of 1935, for alleged transportation of oil alleged to have been produced in excess of the amount permitted by the Texas Proration Law of 1935. Both the Connally Act and the Texas Act were temporary acts, expiring under their own terms in 1937. None of the alleged offenses or acts upon which the offenses were predicated occurred after the expiration of the two acts. The question then arises as to whether the offenses would continue, or rather would indictment lie, or a prosecution be supported after the expiration of the acts.

The question as to whether the amendatory act had the effect of extending the offenses is another question, which will be discussed under the next propositions.

The general rule is stated in 16 Corpus Juris, p. 70, Sec. 34, that "if a penal statute is repealed without a saving clause, there can be no prosecution or punishment

for violation of it before the repeal." And in the next Section (35), it is said, "The repeal of an existing statute under which a proceeding is pending puts an end to the proceeding, unless it is saved by proper saving clause in the repealing statute."

The foregoing rule is applied to temporary acts which expire by their own terms. In the case of The Irresistable, 7 Wheat. (U. S.) 551, 5 L. ed. 520, Chief Justice Marshall says:

> "Now, it is well settled, that an offense against a temporary act cannot be punished after the expiration of the act, unless a particular provision be made by law for the purpose."

This is the well recognized rule announced in U. S. vs. Tynen, 11 Wallace 88, 95, 20 L. ed. 153; Yeaton vs. U. S. 5 Cranch, 281, 3 L. ed. 101.

That this is the Common Law Rule cannot be seriously disputed. But the only serious question is: Does the general savings clause of the Federal Statute, R. S. Sec. 13, being the Act of February 25, 1871, U. S. C. A., Title 1, Sec. 29, change the rule as to temporary acts?

R. S. Sec. 13, U. S. C. A., Title 1, Sec. 29, reads as follows:

> "The *repeal* of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper ac-

tion or prosecution for the enforcement of such penalty, forfeiture, or liability."

This statute has been construed as to penalties which have arisen under repealed acts in the cases of U. S. vs. Reisinger, 128 U. S. 403, 32 L. ed. 480; Great Northern R. Co. vs. United States, 208 U. S. 452, 52 L. ed. 567; Landen vs. U. S., 299 Fed. 75; Goublin vs. U. S., 261 Fed. 5; Sims vs. U. S., 121 Fed 515.

If the Sims case, supra, is to be construed as holding what the Government contends, then it is clearly in conflict with Moore vs. U. S., 85 Fed. 465, 29 C. C. A. 269, which was expressly approved by the Supreme Court in U. S. vs. Chambers, 291 U. S. 217, 78 L. ed. 763, 54 Sup. Ct. 434. It is also in conflict with the declaration of this court in U. S. vs. Curtiss-Wright Export Corp., 299 U. S. 304, 81 L. ed. 255.

It is apparent from an examination of the cases that R. S. Sec. 13 does not apply to offenses created by temporary acts which expire under their own terms.

The application of R. S. Sec. 13 to even repealed statutes has been very limited, and it is still the general rule that rights arising under statutes which are repealed without a saving clause deprive the court of jurisdiction over cases arising under the statute repealed. See: South Carolina vs. Gaillard, 101 U. S. 433, 25 L. ed. 937; Baltimore & Pacific Railroad Co. vs. Grant, 98 U. S. 398, 25 L. ed. 231; National Exchange Bank vs. Peters, 144 U. S. 573, 36 L. ed. 545; Sherman vs.

Grinnell, 123 U. S. 679, 31 L. ed. 278; Gurnee vs. County of Patrick, 137 U. S. 145, 34 L. ed. 601. All the foregoing cases were decided after the passage of the Act of February 25, 1871, R. S. Sec. 13.

But the foregoing cases were not cases where it was sought to enforce penalties. They are important only to illustrate the narrow limits within which R. S. Sec. 13 is applied.

It seems well settled that the R. S. Sec. 13 is limited in its application strictly to cases arising under statutes repealed, and as to statutes expiring under their own terms, the doctrine of The Irresistable, supra, is still the law. If this distinction is kept in mind, there is no difficulty with the cases.

An important case is the case of Moore vs. U. S., 85 Fed. 465, 29 C. C. A. 269. In 1895 Moore was indicted with others in a District Court of the territory of Utah, under Section 3 of the Act of 1890 (26 Stat. 209) prohibiting a combination in restraint of trade or commerce in any territory. It will be seen the act was of the same character as the Connally Act of 1935 in question in this case. In January, 1896, Utah became a state. A demurrer to the indictment was overruled by the District Court, but the Circuit Court of Appeals reversed and dismissed the case, because Utah was no longer a territory, and the prosecution could no longer be maintained. The court expressly held the R. S. Sec. 13, did not apply, but applied only to cases where the statute was repealed. The court said:

"Neither do we think the case comes within the provisions of Section 13 of the Revised Statutes. That section reads as follows: (quotes the statute).

"It is clear from the language of the section that it applies only to cases *where the statute defining an offense has been repealed.* The Act of July 2nd was not repealed by the enabling act, for it yet applies to the territories of the United States. It ceased to be in force in Utah only because it was superseded by the Constitution upon the admission of the State."

This case cites and expressly approves and applies the rule of The Irresistable, supra, after the adoption of the Act of 1871 (R. S., Sec. 13 General Saving Clause Act). And this Moore case in turn has been expressly approved by the Supreme Court in the Chambers case.

This latter case limiting R. S. Sec. 13 strictly to repeal of acts is U. S. vs. Chambers, 291 U. S. 217, 78 L. ed. 763, 54 S. Ct. 434. In that case it was held that a prosecution under the Volstead Act arising before the repeal of the Eighteenth Amendment could not be carried on after the amendment was repealed.

The Supreme Court cites the early decision with approval (Yeaton vs. U. S., supra, U. S. vs. Tynan, supra). It also approves Moore vs. U. S., supra (Utah case) and holds that R. S. Sec. 13, U. S. C. A. Title 1, Sec. 29, applies only to cases of statutes repealed by Congress.

The doctrine as to temporary acts is announced in a recent and authoritative case by a three-judge court in the Eastern District of Missouri. The court says:

"Title 1 of this Transportation Act (49 U. S. C. A. Sec. 251, et seq.) as its name implies, was emergency legislation. It has now expired by its own limitation . . . . When an act has thus expired, the effect upon past transactions is the same as if it were repealed at that time. In such cases, in absence of a saving clause, 'all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after'." See Missouri Pac. R. R. Co. vs. U. S., 16 Fed. Supp. 752, (D. C. 760).

An examination of two decisions, one by the district court, United States vs. Curtiss-Wright Export Corp., 14 Fed. Supp. 230, and the reversal of the case by the Supreme Court of the United States in United States vs. Curtiss-Wright Export Corp., 299 U. S. 304, 81 L. ed. 255, shows that this rule is approved by the Supreme Court.

May 28, 1934, Congress passed a resolution to prohibit the sale of arms or munitions of war to the nations engaged in Chaco. It prohibited the sale of arms in violation of such proclamation as might be issued by the President. The defendant was indicted for acts committed during the continuance of the President's proclamation. The proclamation had been revoked by subsequent proclamation after the commission of the alleged criminal acts.

The district court held that the resolution constituted an unlawful delegation of legislative authority to the President and sustained a demurrer to the indictment.

The court passed on the effect of R. S. Sec. 13, and held there was no difference in cases where the statute was repealed and where they expired under their own terms, and held that the general savings clause applied. In other words, the word "repeal" was not discussed by the court, and the court seems to treat the distinction as trivial.

The Supreme Court on direct appeal by the Government reversed the district court and held the power given the President was not an unlawful delegation of legislative power.

The court, however, on the other question of the expiration of a temporary act disagree with the reasoning of the lower court. The Supreme Court recognized the rule of "The Irresistable" case, and said:

> "The second proclamation of the President revoking the first proclamation, it is urged, had the effect of putting an end to the Joint Resolution, *and in accordance with a well settled rule, no penalty could be enforced or punishment inflicted thereafter for an offense committed during the life of the Joint Resolution in the absence of a provision in the resolution to that effect.* There is no doubt as to the general rule or as to the absence of a saving clause in the Joint Resolution. But is the case presented one which makes the rule applicable?"

The Court then cites and approves the splendid case of Stevens vs. Dimond, 6 N. H. 330, 332, which states the rule exactly. The Supreme Court says:

"There, a town by-law provided that if certain animals should be going at large between the first day of April and the last day of October, etc., the owner would incur a prescribed penalty. The trial court directed the jury that the by-law, being in force a year only, had expired so that the defendant could not be called upon to answer for a violation which occurred during the designated period. The state appellate court reversed, saying that when laws 'expired by their own limitation, or are repealed, they cease to be the law in relation to the past, as well as the future, and can no longer be enforced in any case. No case is, however, to be found in which it was ever held before that they thus ceased to be law, unless they expired by express limitation in themselves, or were repealed. It has never been decided that they ceased to be law, merely because the time they were intended to regulate had expired. A very little consideration of the subject will convince anyone that a limitation of the time to which a statute is to apply, is a very different thing from the limitation of the time a statute is to continue in force'."

So the Supreme Court held that it was the resolution of Congress which had been violated, not the proclamation of the President, but the proclamation merely fixed the limits within which the prohibitory provisions of the Resolution were in force. If the Resolution had expired under its terms, the court conceded the prosecutions under it would fall.

An examination of the cases undoubtedly shows that a prosecution for alleged criminal acts in violation of a temporary law cannot be instituted and maintained

after the law has expired under its own terms, and that the General Savings Clause, R. S. Sec. 13, applies only to acts repealed.

The question now presents itself as to whether the extension of the Connally Act by the Act of June 14, 1937, will be construed prospectively, and not retroactively as to past offenses.

II.

To the effect that the extension of the Connally Act by the amendment of 1937 and of the Texas Proration Act by the amendment of 1937 will be construed prospectively, and not retroactively to extend prior offenses.

AUTHORITIES

Kring vs. State of Missouri, 17 Otto. 221, 107 U. S. 231, 27 L. ed. 509, 2 S. Ct. 451;

Murray vs. Gibson, 15 How. (U. S.) 421, 14 L. ed. 755;

Brewster vs. Gage, 280 U. S. 338, 74 L. ed. 457, 463;

United States vs. St. Louis, S. F. & T. R. Co., 270 U. S. 1, 70 L. ed. 435;

United States vs. Magnolia Petroleum Co., 276 U. S. 150, 72 L. ed. 509;

Russell vs. United States, 278 U. S. 181, 73 L. ed. 255;

Chew Heong vs. United States, 112 U. S. 536, 28 L. ed. 770;

Article 1, Sec. 9, Par. 3, Constitution of U. S.;

Article 1, Sec. 16, Constitution of Texas;

State vs. Sneed, 25 Tex. Supp. 66;

Moore vs. State, 14 Vroom 203, (N. J.), 39 Am. Dec. 558;

People vs. Lord, 12 Hun. (N. Y.) 282;

Dash vs. Van Kleeck, 7 John 477 (N. Y.);

State vs. Hazard, 8 R. T. 273, 5 Am. Dec. 291;

Wharton's Criminal Pleading and Practice (8th Ed.), note p. 211, Sec. 316;

32 Tex. Jur. Sec. 5;

Phillips vs. State, 244 S. W. 147;

Plachy vs. State, 239 S. W. 979.

ARGUMENT

The Federal rule and the rule in Texas as to what constitutes an *ex post facto* law is the same.

Article 1, Sec. 9, Par. 3, of the Federal Constitution, places a limitation upon Congress:

> "No Bill of attainer or *ex post facto* law shall be passed."

The best statement of what constitutes an *ex post facto* law is to be found in Kring vs. State of Missouri, 17 Otto 221, 107 U. S. 231, 27 L. ed. 509, 2 S. Ct. 451. The Court says:

> "Any law is an *ex post facto* law, within the meaning of the Constitution, passed after the commission of a crime charged against a defendant, which in relation to that offense or its consequences, alters the situation of the party to his disadvantage, and no one can be criminally punished in this country, except according to a law prescribed for his government by the sovereign authority before the imputed offense was committed, and which existed as a law at the time."

The case cites State vs. Sneed, 25 Tex. Supp. 66, and the famous case of Hartung vs. People, 22 N. Y. 95.

An examination of the case of Moore vs. State, 14 Vroom 203 (N. J.), 39 Am. Rep. 558, will give a complete history of the doctrine of *ex post facto* law. A splendid note is found in 37 Am. St. Rep. 586, where the case of People vs. Lord, 12 Hun. 282, is cited. We will discuss this case later.

From the early case we learn that Blackstone's definition of *ex post facto* is to be taken as illustrative and not all inclusive.

A temporary act like the Connally Act and the Proration Act is analogous to statutes of limitation. In enacting the laws, there is a limit beyond which the sovereign has provided the act shall cease to be an offense.

With reference to statutes of limitation Wharton's Criminal Pleading and Practice (8th Ed.) states the rule:

> "While, as will be hereafter seen, courts look with disfavor on prosecutions that have been unduly delayed, there is, at common law, no absolute limitation which prevents the prosecution of offences after a specified time has arrived. Statutes to this effect have been passed in England and in the United States which we now proceed to consider. We should at first observe that a mistake is sometimes made in applying to statutes of limitation in criminal suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, there is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions of construction are to be made. But it is otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its right to prosecute, and declaring the offence to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such

liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. . . ."

This language is taken from People vs. Lord, 12 Hun. (N. Y.) 282. There the court held a law which sought to extend the limitation for an offense void so far as it applied to offenses already committed. A member of the New York Assembly was indicted for accepting a bribe. The period of limitation was three years. Prior to the expiration of the three years, and before the offense was barred, the legislature extended the three-year period to five years. After the three years had expired but before the five years an indictment was brought. The court held that the law extending the time did not apply to offenses committed before the time had been extended. This case has been cited with approval throughout the history of New York, and as late as People vs. Speiger, 277 N. Y. S. 602.

It would seem from the foregoing authority that a law which extended the time within which a prosecution could be commenced after the commission of the alleged offense would be *ex post facto* as to such offense and would be construed as applying only to offenses committed in the future.

The New York case cites and relies upon the case from the Supreme Court of the United States, Murray vs.

Gibson, 15 How. (U. S.) 421, 14 L. ed. 755. This latter case arose from Mississippi where a statute passed in 1846 declared that no record of any judgment recovered in a foreign court against a citizen of Mississippi should be received in evidence in the state after the expiration of three years from the date of the judgment. The Supreme Court held that the statute had no application to judgments rendered before its passage. This is in line with the doctrine announced in the case of Bear Lake & R. Waterworks & L. Co. vs. Garland, 164 U. S. 1, 41 L. ed. 327 (d. c. p. 33, 1st col. par. 2). There the Court says:

> "It may be assumed that where a statute creates a right not known to the common law, and provides a remedy for the enforcement of such right, and limits the time within which the remedy must be pursued, the remedy in such cases forms a part of the right, and must be pursued within the time prescribed, or else the right and remedy are both lost."

In the case of United States vs. Salsberg, 287 Fed. 208, the circuit court of appeals holds that this question is not necessary to a determination of the case, but cites as decisive of the question the line of cases which we have discussed.

However, the question is not whether the Connally Extention Act of 1937 would be void if they applied to past offense under the express declaration of their terms. The act does not purport to apply to past offenses, and it is well settled that acts will not be construed as retroactive unless such a purpose clearly appears from the act itself.

The Texas rule is in line with the rule announced by the decisions of this court.

The Texas Constitution, Art. 1, Sec. 16, expressly prohibits "retroactive" laws. And as said in 32 Tex. Jur., Sec. 5, p. 756:

> "A statute imposing a penalty is not construed so as to give a right to the penalty for an act done prior to the effective date of the statute. So to construe it would offend Constitution, Art. 1, Sec. 16. On the other hand, a right to a penalty is not a vested one; consequently, the repeal of a statute imposing a penalty extinguishes (in absence of a saving clause) any right of a action previously accrued."

The result of the provision of the Texas Constitution and the Constitution of the United States, Art.1, Sec. 9, Par. 3 is the same.

So in Texas the cases of Phillips vs. State, 244 S. W. 147, and Plachy vs. State, 239 S. W. 979, 91 Cr. Rep. 405, it was held that the law of the 37th Legislature declaring a purchaser of liquor no longer an accomplice did not apply to offenses committed prior to the passage of the act.

When the Texas Proration Act of 1935 and the Connally Act of 1936 were passed, both acts by their terms showed a definite intention to limit the operations to a period of two years. They were definitely emergency acts. No provision was contained in either act for a continuance of offenses after the acts expired. When they

were re-enacted by the Acts of 1937, the Legislature extended the provisions for future offenses, but there is nothing in the extending acts to indicate a purpose of extending prosecutions as to past offenses.

In the case of Brewster vs. Gage, supra, the Supreme Court through Mr. Justice Butler says:

> "Ordinarily statutes establish rules for the future, and they will not be applied retrospectively unless that purpose plainly appears."

The case of Russell vs. United States, supra, is very much in point. It was contended by the Government that the time to bring suits for income tax had been extended from five, after the return is made, to six years after the assessment by the Act of June 2, 1924. The suits would have been barred in five years on June 12, 1924. The court held that the Act of 1924 extending the limitation, *even though effective before the suit was barred by the five-year statute*, did not apply to taxes assessed under prior acts. The court says:

> "Manifestly, but for Sec. 278 petitioners would be free from liability under the five-year limitation in the Act of 1918, continued by the Act of 1921. If Sec. 278 refers only to assessments made after June 2, 1924, petitioners are not liable.
>
> "If an assessment made before that date comes within the ambit of Sec. 278, its effect *would be retroactive*, and certainly it would produce radical change in the existing status of the claim against the petitioners—*would extend* for some five years a liability which had almost expired. United States

vs. Magnolia Petroleum Co., 276 U. S. 160, 72 L. ed. 509, 48 Sup Ct. Rep. 236, declares: 'Statutes are not to be given retroactive effect or construed to change the status of claims fixed in accordance with earlier provisions unless the legislative purpose so to do plainly appears.' No plain purpose to change the status of the claim against petitioners as it existed just before June 2, 1924, can be spelled out of the words in Sec. 278 or elsewhere."

So in this case when the Connally Extension Act of 1937 was passed on June 14, 1937, but two days within which the right to proceed against these defendants remained. The extension act was passed extending this two-day period for two years and fourteen days. Such a construction would certainly, as the Supreme Court says, "produce a change in the existing status" of these defendants. Such a construction will not be given to the Act unless the purpose clearly appears.

In passing upon a statute extending the period of limitation, in United States vs. St. Louis, S. F. & T. R. Co., supra, Mr. Justice Brandeis says:

"That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. It has been applied by this court to statutes governing procedure. (Citing cases.) There is nothing in the language of paragraph 3 of Sec. 16, or any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies under the circumstances, to causes of action existing at the date of the act."

Another pertinent case is Chew Heong vs. United States, supra, in which the Supreme Court refused to give a retroactive effect to the Chinese Exclusion Act.

It would seem clear from the foregoing cases that the Connally Extension Act of 1937 would not be given a retroactive construction so as to extend offenses committed under the original act, and which offenses would have become barred in two more days when the extension Act of June 16, 1937 became effective.

It is not contended in the Government's brief that the result of its position would not be to give a retroactive effect to the Act of June 14, 1937, but the Government contends that such a result is to be inferred from the very passage of the act itself. But as said by the trial court, nothing in the line of cases cited by the Government sustains any such rule of construction, and the Government wholly ignores the decisions of this court to the contrary.

It would have been an easy matter for Congress to have said in no uncertain words when the Connally Act was extended that past offenses should be kept alive and subject to future indictments. The able Junior Senator from Texas who sponsored the act as originally passed and the extension is too able a lawyer to be charged with having failed to express his intentions in the act itself.

There is a significant matter which supports the position of appellees. Recently there has been considerable

public sentiment for the extension of the policy of the Connally Act as permanent legislation. Senator Connally has introduced in the Senate, and from the public press it appears the Senate has passed, Senate Bill 1302 (introduced February 13, 1939) which repeals Section 13, of the Act of February 22, 1935, as amended by the Act of June 14, 1937. The effect of the bill would be to extend the Connally Act indefinitely as a permanent policy of the Government. Inasmuch as the act is to become permanent, the Senate has expressly showed its intention to keep alive offenses committed under the previous acts. Section 2 of the proposed law reads,—

> "Sec. 2. (a) No action or prosecution for the enforcement or collection of any penalty, forfeiture, or liability for any violation of such Act, before or after the date of enactment of this Act, shall be deemed to be barred or prevented by reason of the expiration, after the date of such violation, of (1) the period to which the effectiveness of such Act of February 22, 1935, would have been limited under such section 13, as originally enacted, (2) the period to which the effectiveness of such Act would have been limited under such section 13, as amended by the Act of June 14, 1937, or (3) the effective period of any State law, regulation, or order, with respect to contraband oil.
>
> (b) If any provision of this section, or the application thereof to any person or circumstance or with respect to any period of time, shall be held invalid, the remainder of the section, and the application of such provision to other persons or circumstances or with respect to other periods of time, shall not be effected thereby."

This is very definite language and the intention of Congress, if the bill becomes a law, cannot be mistaken. But it would seem a travesty upon all rules of statutory construction to contend that a law without the provisions above would mean the same thing, and that a court should give to the statute without such a provision the same effect as if the provision is included.

Words would indeed be futile things if courts, in their absence and when they are not expressed, implied their use and read into statutes language which could have been included by simple and clear expression.

It is true as argued by the Solicitor General in his brief that courts will imply in statutes a meaning reasonable essential to the carrying out of the purpose for which the act was passed. But it seems hardly logical to contend that when a statute is passed for the purpose of making certain acts a crime on and after a given date that it is essential to the effectiveness of the statute to imply a retroactive intention that the same acts committed prior to said date should be subject to indictment and punishment along with future offenses. It is equally illogical to contend that Congress, intending to enact a mere temporary expedient, intended to send men to the Federal Prison under indictments brought after the time which Congress under its own enactment intended there should be no violation of the law.

Congress had the right to extend the time for the expiration of the Connally Act. This it did.

Congress also had the right to preserve the penalties under the original act. This it did not do.

A DISCUSSION OF THE ENGLISH AUTHORITIES AND TEXTS CITED AND REFERRED TO BY THE GOVERNMENT.

The preceding portions of appellees' brief were written in main before appellees were furnished with a copy of the Government's brief. Counsel writing this brief was away from his office for a month in the trial of a case in another state. The English authorities were not available. After carefully reading the English authorities and the texts cited by the Government, we can find nothing therein that mitigates in the least against the authorities discussed and propositions laid down in the foregoing portions of this brief.

It is not appellees' contention that there were two separate laws represented by the Connally Act of 1935 and the act of 1937. To argue such a question is mere quibbling. The exact facts are, there were two acts. The first act was passed in 1935 and would have expired June 16, 1937. But a second act was passed extending the expiration date of the first act, so that the first act did not expire.

The important questions are,—

1. Would offenses committed under a temporary act lapse when the act expired.

2. Did the act extending the temporary act have the retroactive effect of continuing offenses committed before the act was extended.

There is nothing in any of the authorities cited by the Government contrary to the decision of the trial court.

Let us take the first English case cited by the Government.

In *Dingley vs. Moor*, Cro. Eliz. 750, 78 Eng. Rep. 982, it appears that a temporary statute had been made permanent. *The offense involved in the indictment was committed after the statute had been made permanent.* There was no question involved as to an offense committed while the act was merely temporary.

The indictment charged the offense "*contra forma statuti,*" and it was contended that the indictment should have used the word "*statutorium.*" It is apparent, and one need only a smattering of Latin to get the point, that the only question involved was,—Could the offense, committed after the temporary act had been made permanent, be charged under the original act. The court held that it could.

The cases of *Rex. vs. Morgan, 2 Strange 1066, 93 Eng. Rep. 1036; Shipman vs. Henbest, 4 T. R. 109, 100 Eng. Rep. 921;* and *Ex parte Drydon, 5 T. R. 417, 101 Eng. Rep. 235* decided the same question. We had been unable to find *Rex vs. Swiney, Alcock & N. 131, 132* (1832). But we assume it is in line with Dingley vs. Moor, supra, as the Government so cites it.

All these cases hold that the extension of the time for a temporary act to expire extends the original act. But none hold that the offenses committed under the act before it was extended could be prosecuted after the statute would have expired.

The Government cites Kent's, *Commentaries*, (14 Ed.), Vol. 1, p. 465. We have located the reference in the 13th Edition, Vol. 1. Part III, Lect. XX, Part 6, p. 465. The Government does not quote from the learned Chancellor. The Solicitor evidently refers to the latter portion of the paragraph. We will quote the first part, which is one of the clearest statements of the rule as applied by the trial court in this case. Like the trial court, Chancellor Kent grounds his statement of the rule on the case of The Irresistible, supra. The text says,—

"*EFFECT OF TEMPORARY STATUTES.*—If an act be penal and temporary by the terms or nature of it, *the party offending must be prosecuted and punished before the act expires or is repealed.* Though the offense be committed before the expiration of the act, the party cannot be punished after it has expired, unless a particular provision be made by law for the purpose." The text cites the long line of decisions relief upon by appellees. (Italics above ours.)

The Chancellor then announces the rule of Dingley vs. Moor, supra, which has no application here.

The Government quotes from Endlich, Interpretations of Statutes (1888), p. 693, where the rule of Dingley vs. Moor is laid down.

But on page 680, Sec. 478, of the same volume of Endlich, the author says,—

"Where an act expires or is repealed, it is, as regards its operative effect (in the absence of provision to the contrary), as if it had never existed, except as to matters and transactions past and closed. . . . where, therefore, a penal law is broken, the offender cannot be punished under it, if it expires (or is repealed) before he is convicted, although the prosecution was begun while the act was still in force (unless the repealing act contains a saving clause." This text cites cases from every English speaking jurisdiction. Yet the able Solicitor General tells us in his brief that it is doubtful whether the rule of The Irresistible, supra, ever existed at Common Law to temporary acts.

Again at page 682, Sec. 479, the same author says,—

"Wherever the jurisdiction exercised in proceedings depends wholly upon statute, and the statute is repealed, or expires by its own limitations, the jurisdiction is gone, and with it the whole proceeding, imperfect at the time of the repeal or expiration, falls to the ground, unless there be a reservation as to pending rights or causes." Citing the line of authorities relied upon by appellees.

The Government tells us to see also *Dwarris, Statutes (2nd Ed. 1848) p. 528.* The earlier edition was not available but we found *Dwarris (1885) on Statutes and Constitutions.* The text says,—

"When an act of parliament is repealed, it must be considered (except as to transactions past and closed as if it had never existed. . . . So, in a criminal case, (citing Rex vs. McKenzie, supra) an act from its passing repealed a former act, which ousted clergy from a certain offense, and imposed a new penalty on the same offense from and after its passing. It was held that an offense committed before the passing of a new act, but not tried till after, was not liable to be punished under either of these statutes. For the former act was repealed; and as to the latter, *the provisions cannot be retrospective, unless declared to be so by express words; either by an enumeration of the cases in which the act is to have a retrospective operation, or by words which can have no meaning unless such construction is adopted.*" Citing Churchill vs. Crease, 5 Bing. 178, Torrington vs. Hargraves, id 492. (Italics ours.)

The authorities above cited by the Government merely more clearly illustrate the rule that where a criminal statute expires under its own term or is repealed, in absence of a saving clause, all prosecutions stop. This court has settled the question that the general saving clause of Revised Statutes, Sec. 13 applies only to repeals.

The Government also cites the English case of Stevenson vs. Oliver, 8 M. & W. 234 (1841), 151 Eng. Rep. 1024. The Government concedes that the statements relied upon are *dicta*. And it appears that the *dicta* was expressly overruled by Darling, J., in *Rex vs. Ellis, 125*

L. T. R. 397, relying upon *Rex vs. McKenzie, Russ & R. 429 (1820), 168 Eng. Rep. 881.*

The Government says Rex vs. McKenzie dealt with a repeal and not an expiration. But at common law there was no distinction, and the only distinction ever made by any authorities is under Revised Statutes of United States, Sec. 13. This section has been held to apply only to repeals.

We think there is nothing in the cases cited by the Government which would tend to show the opinion of the trial court wrong.

CONCLUSION

Appellees submit that the action of the trial court in sustaining the demurrer to the indictment was correct.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 687.—October Term, 1938.

The United States of America, Appellant, *vs.* Neal Powers and Rene Allred.	Appeal from the District Court of the United States for the Southern District of Texas.

[May 15, 1939.]

Mr. Justice Douglas delivered the opinion of the Court.

This is an appeal, under the Criminal Appeals Act of March 2, 1907, (18 U. S. C. § 682) and Sec. 238 of the Judicial Code (28 U. S. C. § 345), from a judgment of a district court sustaining demurrers and motions of the appellees to quash an indictment. (— Fed. (2d) —.)

The indictment, filed September 17, 1938, charges appellees with violations of the Connally (Hot Oil) Act of February 22, 1935, as amended. (15 U. S. C. § 715 *et seq.*) and with conspiracy to violate such Act (18 U. S. C. § 88). The various substantive counts charge that appellees, in violation of the Act, as amended, transported in interstate commerce from the Conroe Oil Field in Montgomery County, State of Texas, to Marcus Hook, Pa. certain petroleum products in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of Texas and the regulations and orders prescribed by the Railroad Commission of Texas. These transportations are alleged to have been made on various dates from November 4, 1935, to March 20, 1936. The conspiracy count charges a conspiracy by appellees to violate the Act, as amended, by producing, transporting, and withdrawing from storage petroleum in excess of the amounts permitted to be produced, transported, and withdrawn from storage under the laws of Texas and the regulations and orders promulgated thereunder. These transportations are alleged to have been made between the same places alleged in the substantive counts, on various dates from on or about September 4, 1935, to on or about March 15, 1937.

Sec. 12 of the Act of February 22, 1935, provided that "This Act shall cease to be in effect on June 16, 1937." This section was

amended by the Act of June 14, 1937, "by striking out 'June 16, 1937' and inserting in lieu thereof 'June 30, 1939' ". No other amendments to the Act were made.

The single question before us is whether violations of this Act alleged to have been committed prior to June 16, 1937, may be prosecuted under an indictment returned subsequent thereto. The district court by sustaining the demurrers and motions to quash answered that question in the negative. We think it erred.

The Congress alone may declare whether those who, before June 16, 1937, violated the Act may be prosecuted thereafter. The question is one of the purpose of Congress. Explicit provisions in the amendment preserving the right of prosecution after the date originally set for expiry of the Act would have made that purpose clear beyond question. But the surrounding circumstances here make this purpose as clear and as unequivocal as an explicit provision. This is an Act designed to protect interstate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil, (as defined in the Act) and to encourage the conservation of deposits of crude oil within the United States. Administrative machinery is provided for the control of shipment or transportation of contraband oil in interstate commerce. Secs. 4, 5 and 9. Such shipment or transportation is prohibited, unless on appropriate findings the President, by proclamation, lifts the prohibition. Secs. 3 and 4. Penalties are provided for violations of the Act or any regulations prescribed thereunder. Secs. 6 and 7. And section 10 implements the Act with civil and criminal procedures to enforce its sanctions. The Act is thus a self-sustained and organic whole, equipped to effectuate a declared policy of the Congress. By its original terms it would have expired June 16, 1937. But it never expired, for on June 14, 1937, the whole Act was continued in effect until June 30, 1939. Its substantive phases were not altered one whit or tittle; its sanctions were neither reduced nor increased. Precisely the same acts continue to be prohibited after the amendment as before. The amendment merely perpetuated the entire Act for another term.

In view of these circumstances, it seems clear beyond question that it was the purpose of Congress, expressed in the amendment of June 14, 1937, to treat this Act precisely in the same way as if

by its original terms it was to expire on June 30, 1939. Due to the amendment, the Act has never ceased to be in effect. No new law was created; no old one was repealed. Without hiatus of any kind, the original Act was given extended life. There was no First Connally Act followed by a Second Connally Act. During the periods in question there was but one Act. No evidence has been brought to our attention, and we have found none, that Congress proposed to waive or to pardon violations which occurred prior to June 16, 1937, but which were not prosecuted until subsequent thereto.

There is a secondary consideration which points to the same conclusion. If the appellees are right in their contention, a temporary act such as this one would lose, as a practical matter, some of its sanctions. Violations could occur with impunity months before its expiry, for in practice there frequently is an unavoidably substantial lag between violation and prosecution. The statute should not be so construed if another interpretation will make it effective. As this Court said in *Bird* v. *United States*, 187 U. S. 118, 124, "There is a presumption against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience." We are unwilling to conclude that although the same acts continue to be prohibited after June 16, 1937, as before, violations committed prior to that date are not punishable thereafter.

In view of this conclusion, we do not reach the nub of appellees' argument based on Chief Justice Marshall's statement in *The Irresistible*, 7 Wheat. 551, 552 "that an offense against a temporary act cannot be punished after the expiration of the act, unless a particular provision be made by law for the purpose." For in this case, as we have said, the Act of February 22, 1935, did not expire on June 16, 1937.

But even if we assume the validity of that statement, it seems to us clear that though the Act be treated as having expired or terminated on June 16, 1937, the result is the same. For in this case "particular provision" has been made "by law for the purpose" of extending the enforcement machinery with reference to prior criminal violations. The "particular provision" was the amendment of June 14, 1937, extending the effective period of the Act. That amendment was passed prior to the original expiration date. When read in light of the title of the amendatory statute, viz.

"An Act to continue in effect until June 30, 1939, the Act . . . approved February 22, 1935", the statement of purpose becomes plain and unambiguous. If the amendment of June 14, 1937, had merely "extended" the duration, or postponed the expiration, of section 10 of the Act dealing with criminal penalties, "particular provision" for subsequent prosecutions would have been indubitably clear. The fact that all sections, including section 10, were extended makes it nonetheless plain. The whole, though larger than any of its parts, does not necessarily obscure their separate identities.

In view of these various considerations, we hold that this prosecution does not offend the prohibition in Article I § 9, cl. 3 of the Constitution against *ex post facto* laws.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.